New Mitigation Rule
Avoidance-Minimization Requirements
Individual Permit Applications

33 CFR Part 325.1(d)(7)

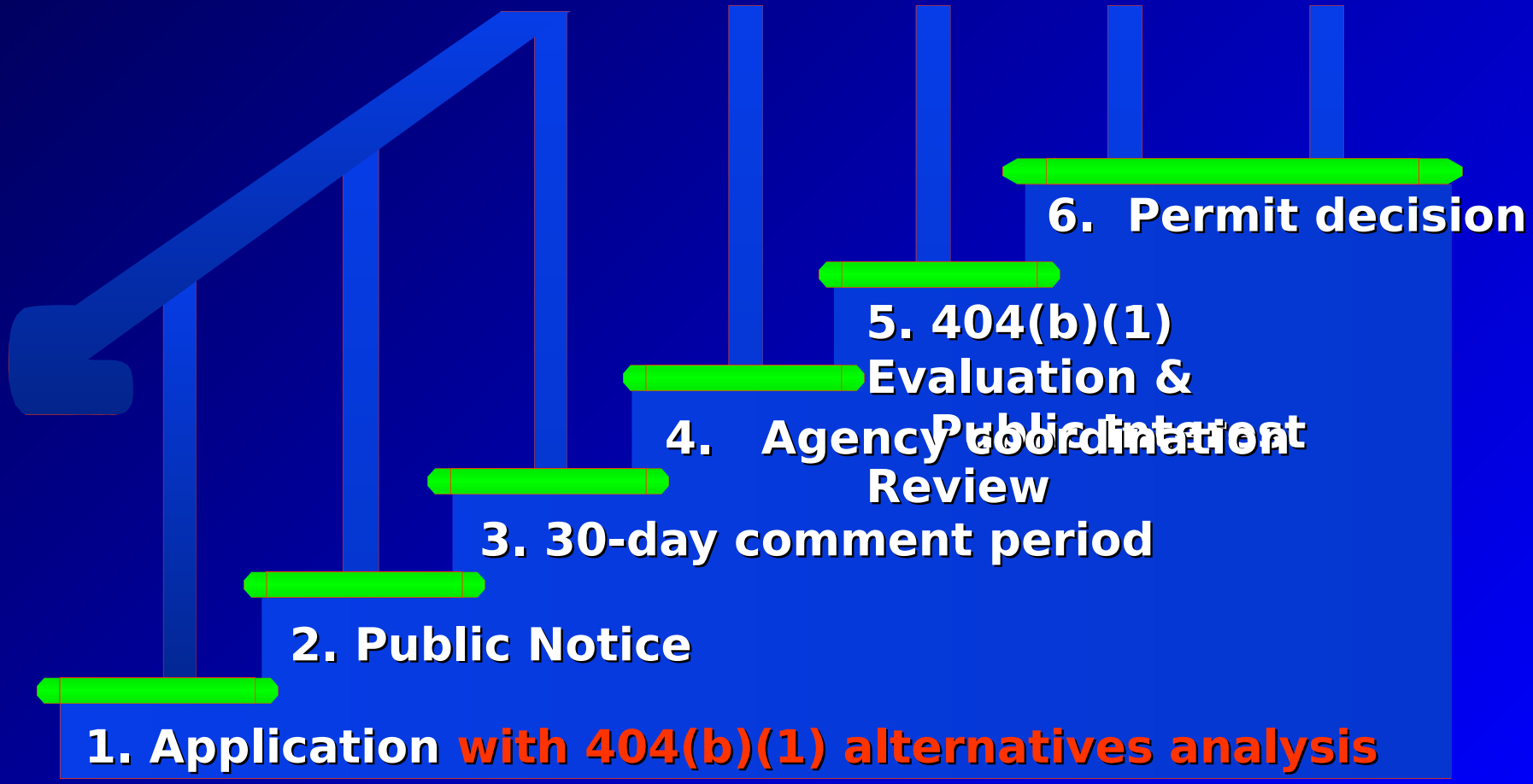
What Must an Application Include?

- **Rule requires a statement describing how impacts to waters of the US are to be avoided and minimized**
- **Practically speaking a 404(b)(1) alternatives analysis is required**

Individual Permits

Savannah District

Processing Steps (120 days)


1. Application with 404(b)(1) alternatives analysis
2. Public Notice
3. 30-day comment period
4. Agency Coordination
5. 404(b)(1) Evaluation & Public Interest Review
6. Permit decision

404 (b)(1) Guidelines

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1990 Memorandum of Agreement
Between
USACE and USEPA
Provides Guidance Regarding

Exercise of Discretion

Under the Guidelines

404 (b)(1) Guidelines

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Exercise of Discretion

Use a Common Sense Approach
for Project Development
and
Permit Application Preparation

404 (b)(1) Guidelines

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Basic Project Purpose

- **Project purpose drives the alternatives analysis process**
- **Applicant provides Corps with need and purpose statement**
  - **Maximizing profits for commercial/residential developments is not an acceptable project purpose**
- **With applicant input, the Corps determines basic project purpose**
- **Practicable alternative must meet the basic project purpose**

404 (b)(1) Guidelines

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Sequential Steps

- Determine water dependency
- Consider off-site alternatives
- Avoid unnecessary impacts
- Minimize unavoidable impacts
- Compensatory mitigation

Water Dependency

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- A marina is water dependant
- Houses, golf courses, malls and lakes are not water dependant

Off-Site Alternatives

For a non-water dependent project, an alternative site that would involve less adverse impact on the aquatic environment is presumed to exist

Off-Site Alternatives

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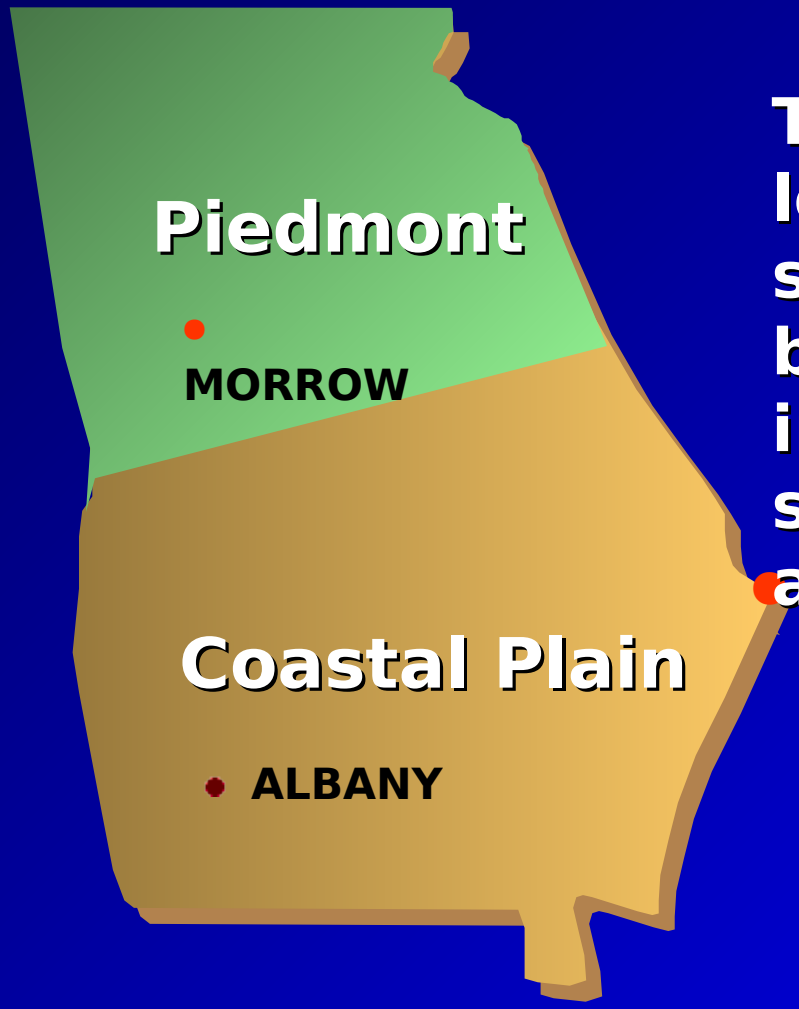

The geographic location of a project site can have a bearing on the intensity of the off-site alternatives analysis required

Off Site Alternatives

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Geographic Location – Coastal Plain

- **Many Lower Coastal Plain sites are at least 1/3 wetland (2/3 upland)**
- **An intensive off-site alternatives analysis may not be required for a Coastal Plain site that is 1/3 wetland or less**
- **The amount of wetlands on Upper Coastal Plain sites will vary considerably and this guidance may not be applicable**

Off-Site Alternatives

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Geographic Location – Piedmont

- **Most Piedmont sites are < 10% wetland**
- **The amount of wetland on a Piedmont site will not have much of an affect on the intensity of the off-site alternatives analysis required**
- **Piedmont sites are dominated by perennial and intermittent streams**
- **The off-site alternatives analysis required for a Piedmont site with**

Off-Site Alternatives

Savannah District

Urban vs. Rural

- **In urban areas, remaining undeveloped properties are generally surrounded and dominated by degraded aquatic systems**
- **Aquatic functions provided by the wetlands and streams that remain in urban areas are extremely important**
- **Projects in urban areas will require a more intensive off-site alternatives analysis**

Off Site Alternatives

Savannah District

Urban vs. Rural

- **The aquatic systems in rural areas are generally more intact and functional**
- **Impacts associated with rural projects do not typically result in a major degradation of aquatic functions for the system**
- **The alternatives analysis required for a rural project may not be as intensive**

Off-Site Alternatives

Savannah District

Scale of Aquatic Impacts

- **The larger the aquatic impact relative to the size of the project area, the more rigorous the requirement to conduct an intensive analysis of off-site alternatives**
- **One acre impact on a two acre site would require a very intensive off-site analysis**
- **One acre impact on a 100-acre site would require a much less**

Off-Site Alternatives

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Do I Really Have To Do One?

- **Geographic location, aquatic impacts and size of project will influence the intensity of the off-site alternatives analysis**
- **But the answer is YES, an off-site alternatives analysis is required with every individual permit application**
- **Must provide 3 sites → Preferred and 2 alternates**

Avoidance

Once the Preferred Project Site is Selected, Unnecessary Impacts to the Aquatic Environment Must be Avoided to the Maximum Extent Practicable

Avoidance

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Common Mistakes

- **Wholesale filling of aquatic resources for the creation of developable lots in a residential subdivision will not pass the avoidance step**
- **Very difficult to demonstrate avoidance for a recreational amenity lake in a residential subdivision**

Avoidance

Simple Rules

- **If total avoidance is impossible, propose aquatic impacts as the last resort!**
- **Roads should cross aquatic systems at narrowest points**
- **Do not run utilities through aquatic systems**
- **Avoid impacts to high quality aquatic systems and impact only low quality or degraded resources**
  - **For example, construct a bridge over a high quality perennial stream and**

Minimization

Unavoidable Impacts to the Aquatic Environment Must be Minimized to the Maximum Extent Practicable

Minimization

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Simple Rules

- **Install bottomless culverts to allow free movement of aquatic organisms**
- **Reduce fill slope from 4:1 to 3:1 or 2:1**
- **Utilize state-of-the-art erosion and sedimentation control techniques on exposed soils and fill areas**
- **Re-vegetate utility right-of-ways in wetlands with native plant species**

Compensatory Mitigation

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Only After Demonstrating that Impacts to the Aquatic Environment Have Been Avoided and Minimized to the Maximum Extent Practicable Will Compensatory Mitigation be Considered

404 (b)(1) Guidelines

Permit Decision

- **The US Army Corps of Engineers can only issue a permit for the least environmentally damaging practicable alternative that meets the basic project purpose**
- **The only reason Savannah District has denied an individual permit is failure to comply with the 404 (b)(1) Guidelines**